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Decision

Matter of: The Bionetics Corporation

File: B-420272

Date: January 7, 2022

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Colonel Frank Yoon, and Nicholas T. Iliff, Jr., Esq., Department of the Air Force, for the agency.
Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's elimination of a proposal from competition is denied where the decision was reasonable and in accordance with the terms of the solicitation.

DECISION

The Bionetics Corporation, of Yorktown, Virginia, protests the elimination of its proposal from the competition under request for proposals (RFP) No. FA8224-21-R-0002, issued by the Department of the Air Force, for aerospace ground equipment (AGE) operations, maintenance, repair, and dispatch services at Hill Air Force Base (AFB) in Utah and Davis-Monthan AFB in Arizona. The protester argues the agency's decision to eliminate its proposal from the competition based on an incomplete price volume was unreasonable.

We deny the protest.

BACKGROUND

On March 11, 2021, the agency issued the RFP in accordance with Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), Tab 3, RFP at 278. The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity contract on a fixed-price, cost-reimbursement basis with a base period from January 6, 2022 to January 5, 2028, and an option period from January 6, 2028 to January 5, 2030. *Id.* at 2, 82, 255. The due date for proposals, as amended, was May 19, 2021. Contracting Officer's Statement (COS) at 4; AR, Tab 24, RFP amend. 0004 at 1.

The RFP provided that proposals were to consist of four volumes: price, technical, past performance, and contract documentation.¹ RFP at 258. For price, the RFP required offerors to insert rates for various labor categories into a matrix that would be used to evaluate total price.² AR, Tab 7, Instructions Version Three at 8. The technical volume was to address three areas: management approach, resource management and staffing plan, and contract execution scenario. *Id.* at 9-12. For these areas, offerors were to demonstrate, among other things, their approach to contractor management, and plans for recruiting and maintaining their workforce. *Id.* For past performance, offerors were to identify up to three prior contracts within the past five years that demonstrated relevant experience *Id.* at 12-13. For contract documentation, offerors were to complete various forms and provide signed copies of all amendments. *Id.* at 13-15.

The RFP provided for the evaluation of proposals on a lowest-price, technically acceptable basis where the agency would evaluate price for reasonableness, completeness, and balance; technical and past performance volumes on an acceptable/unacceptable basis; and contract documentation for completeness. AR, Tab 10, Evaluation Factors Version Three at 1-8. Because both the Hill AFB and Davis-Monthan AFB were subject to collective bargaining agreements (CBA), the RFP required that rates for all labor categories be proposed, at a minimum, in accordance with the CBA requirements. AR, Tab 7, Section L Instructions Version Three at 8. The agency reserved the right to exclude proposals from the competitive range if they failed to meet the requirements of the CBA. *Id.*

On September 30, 2021, the agency informed Bionetics that its proposal was eliminated from the competition because the firm submitted an incomplete price proposal. Protest, exh. 1, Unsuccessful Offeror Notice at 1. Following this notice, Bionetics requested a debriefing, which the agency provided on October 4. COS at 5. Bionetics then submitted debriefing questions on October 6, to which the agency responded the same day. *Id.* In its response, the agency explained that Bionetics's price proposal was incomplete because two of its labor rates failed to match or exceed the minimum labor rates provided in the CBA. Protest, exh. 3, Answers to Debriefing Questions at 1-2. This protest followed.

¹ Because Bionetics's proposal was eliminated from the competition for an incomplete price volume, the agency did not complete a technical evaluation of Bionetics's proposal. COS at 5. Therefore, this decision only briefly discusses the other volumes to provide sufficient background about the procurement.

² In addition to fixed-price line items, the RFP included a cost-reimbursable line item for materials, which was not to be considered in the calculation of total evaluated price.

DISCUSSION

Bionetics, the incumbent contractor, contends the agency unreasonably determined that its price volume was incomplete. Comments at 3-4. Alternatively, Bionetics argues that any incorrect labor rates were obvious clerical errors that should have been resolved through clarifications or waived.³ Protest at 2-10; Comments at 7.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. See *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 5-6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.* at 5.

Here, Bionetics contends that its proposal was not "incomplete" because the RFP defined "completeness" for a price proposal as "all the required portions filled out entirely," and did not incorporate a requirement that a price proposal meet or exceed the CBA minimum thresholds to be "complete." Comments at 3; AR, Tab 10, Evaluation Factors Version Three at 2. Having reviewed the record and the parties' arguments, we have no basis to find the agency's decision to exclude Bionetic's proposal from the competition unreasonable.⁴

As Bionetics argues, the RFP defined "completeness" as a price proposal with "all the required portions filled out entirely." *Id.* Although Bionetics's price proposal satisfied this definition as it filled out all the required portions, the agency's decision to exclude Bionetics's proposal was nevertheless reasonable due to Bionetics's submission of two labor rates that did not meet or exceed the minimum labor rates of the CBA. Specifically, while the definition cited by Bionetics did not mention the CBA's minimum requirements, section L of the RFP expressly provided that "[a]ll labor categories included in the CBA must be proposed at a minimum to the CBA requirements." AR, Tab 7, Instructions Version Three at 8. This section further provided that the agency would remove proposals from the competitive range for failing to meet the CBA's rates. *Id.* As Bionetics concedes, its labor rates failed to satisfy this requirement. Protest at 7. Accordingly, this protest ground is denied.

³ Although we do not address every argument raised by the protester, we have considered them and find none to be meritorious.

⁴ The RFP defined "completeness" as a price proposal with "all the required portions filled out entirely." *Id.* Although Bionetics's price proposal satisfied this definition as it filled out all the required portions, the agency's decision to exclude Bionetics's proposal was nevertheless reasonable due to Bionetics's incorrect labor rates.

Bionetics next contends that the incorrect labor rates were “clerical errors,” or not material, and the agency should have engaged in clarifications so the protester could have corrected these errors. *Id.* Based on the record, we have no basis to object to the agency’s decision not to engage in clarifications. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR 15.306(a); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. The agency has broad discretion to decide whether to engage in clarifications with an offeror. *High Noon Unlimited Inc.*, B-419268, Jan. 12, 2021, 2021 CPD ¶ 22 at 6. Clarifications cannot be used to cure deficiencies or material omissions in a proposal or otherwise revise a proposal. *DataSource, Inc.*, B-412468, Feb. 16, 2016, 2016 CPD ¶ 59 at 4.

We need not reach a conclusion as to whether the non-compliance of the labor rates in question was material because even if Bionetics’s failure to comply with the CBA labor rates was only a “clerical” error, the agency had no obligation to allow Bionetics to clarify the error. The RFP provided that the agency did not intend to hold discussions, but would consider the “correction potential” of a proposal; if the agency determined an error was not “easily correctable” within its time constraints, it might eliminate the proposal from the competition. AR, Tab 10, Evaluation Factors Version Three at 1. The contracting officer concluded that it would not be in the government’s best interest to delay the procurement to allow Bionetics an opportunity to correct the error in its proposal. COS at 7. Based on the record, we have no basis to find the agency’s decision unreasonable.

Last, Bionetics contends that its incorrect labor rates should have been overlooked because it assured the agency it would comply with the CBA labor rates elsewhere in its proposal. Protest at 8. Specifically, Bionetics points to a narrative paragraph in its price proposal wherein it expressly stated it would comply with the CBA. *Id.* We have no basis to object to the agency’s exclusion of Bionetics’s proposal on this basis. Although a paragraph in Bionetics’s proposal stated that it intended to comply with the CBA, two of its labor rates, in fact, did not comply. If this paragraph alone were sufficient to override the incorrect labor rates, it would obviate the need for any offeror to accurately complete a price proposal as the offeror could simply rely on general assertions to override and correct more specific and incorrect terms in its proposal.

The protest is denied.

Edda Emmanuelli Perez
General Counsel